

## Message Text

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ORIGIN ARA-10

INFO OCT-01 ISO-00 L-03 JUSE-00 /014 R

DRAFTED BY ARA/ECA:FERONDON:JC  
APPROVED BY ARA/ECA:RWZIMMERMANN  
L/M:LAHUMMER (INFO)

-----260705Z 118585 /21

R 252314Z APR 77

FM SECSTATE WASHDC

TO AMEMBASSY BUENOS AIRES

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E.O. 11652: N/A

TAGS: PFOR, AR

SUBJECT: REPLY TO GELBARD EXTRADITION REQUEST

TEXT OF DEPARTMENT'S NOTE DATED APRIL 18, WHICH HAS BEEN  
DELIVERED TO THE ARGENTINE EMBASSY IN WASHINGTON, FOLLOWS  
FOR YOUR INFORMATION:

BEGIN TEXT: THE DEPARTMENT OF STATE REFERS TO NOTE NUMBER  
242 OF THE EMBASSY OF THE ARGENTINE REPUBLIC REQUESTING  
THE PROVISIONAL ARREST FOR EXTRADITION OF JOSE BER GELBARD.  
THE DOCUMENTS ATTACHED TO THE NOTE INDICATE THAT MR.  
GELBARD'S EXTRADITION IS SOUGHT FOR THE OFFENSE OF  
EMBEZZLEMENT, WHICH IS LISTED AS AN EXTRADITABLE OFFENSE  
IN PARAGRAPH 12 OF ARTICLE 2 OF THE EXTRADITION TREATY.  
THE NOTE STATES THAT MR. GELBARD IS RESIDING AT THE  
FAIRFAX HOTEL, WASHINGTON, D. C.

IN ADDITION TO THE INFORMATION SUPPLIED AS TO MR. GELBARD'S  
WHEREABOUTS, THE INFORMATION REQUISITE TO JUSTIFY THE  
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PROVISIONAL ARREST OF A FUGITIVE MUST INCLUDE A  
DESCRIPTION OF THE CIRCUMSTANCES OF THE CRIME, INCLUDING  
THE DATE AND PLACE THE CRIME WAS ALLEGEDLY COMMITTED, AND  
A DESCRIPTION AND IDENTIFICATION OF THE ACCUSED, INCLUDING  
DATE AND PLACE OF BIRTH.

THE POLICY OF THE UNITED STATES GOVERNMENT WITH REGARD TO

REQUESTS FOR PROVISIONAL ARREST IS TO ACCOMMODATE THE REQUESTING STATE IN THE BEST POSSIBLE WAY. AS THE REQUEST STARTS THE EXTRADITION PROCESS, WITH THE GOAL OF EFFECTING THE FUGITIVE'S RETURN TO THE REQUESTING STATE, THE POLICY IS TO TAKE THAT ACTION WHICH WILL BEST EFFECTUATE THAT GOAL. THE JUDICIAL BRANCH OF THE UNITED STATES GOVERNMENT WILL USUALLY NOT LEAVE A FUGITIVE INCARCERATED VERY LONG WITHOUT HAVING RECEIVED THE EXTRADITION DOCUMENTATION. THUS, TO ENSURE AGAINST THE POSSIBILITY OF THE FUGITIVE'S FLEEING AFTER HAVING BEEN RELEASED ON BAIL, THE POLICY IS TO ARREST THE FUGITIVE ONLY WHEN THE DOCUMENTATION HAS BEEN RECEIVED OR WHEN THERE IS AN URGENT PROVISIONAL ARREST REQUEST, INCLUDING INFORMATION THAT THE FUGITIVE IS LIKELY TO FLEE. IN ADDITION, THE RELATIVELY SHORT TIME PERIOD ALLOWED BY THE TREATY FOR PROVIDING THE COURT WITH THE DOCUMENTATION MILITATES AGAINST MAKING PROVISIONAL ARREST UNLESS THE DOCUMENTATION IS PREPARED OR UNLESS THERE IS URGENCY TO DO SO.

THE DOCUMENTS ATTACHED TO NOTE NUMBER 242 HAVE BEEN REVIEWED BY THE DEPARTMENT OF STATE AND HAVE BEEN FOUND INSUFFICIENT TO MEET THE REQUIREMENTS OF ARTICLE 11 OF THE TREATY. ALTHOUGH THE DOCUMENT SIGNED BY FEDERAL JUDGE NINO T. GARCIA MORITAN STATES MR. GELBARD IS CHARGED WITH EMBEZZLEMENT, THE FACTS SET FORTH IN THAT DOCUMENT REVEAL ONLY THAT MR. GELBARD OFFERED TO OPEN A BANK ACCOUNT FOR MRS. PERON, THAT HE PROVIDED FUNDS FOR THE ACCOUNT AND ASSURED HER THAT THERE WOULD BE A CONTINUOUS FLOW OF MONEY INTO THE ACCOUNT. THE STATEMENT OF THE FACTS LIMITED OFFICIAL USE

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ARE INSUFFICIENT TO SHOW THAT MR. GELBARD EMBEZZLED MONEY FROM THE ACCOUNT.

IN ADDITION, THE DOCUMENTATION LACKS THE TEXTS OF THE APPLICABLE LAWS DEFINING THE OFFENSE, THE LAW PRESCRIBING THE PUNISHMENT FOR THE OFFENSE, THE LAWS RELATING TO THE LIMITATION OF THE LEGAL PROCEEDINGS, AND EVIDENCE WHICH WOULD BE NECESSARY, ACCORDING TO THE LAWS OF THE UNITED STATES, TO JUSTIFY THE ARREST AND COMMITTAL FOR TRIAL OF MR. GELBARD.

ALTHOUGH THE DOCUMENTS INCLUDE A CERTIFICATION SIGNED BY THE UNITED STATES CHARGE D'AFFAIRES, THE CERTIFICATION BEARS A STAMP INDICATING IT IS FOLIO NUMBER 2 IN A SET OF DOCUMENTS. FOLIO NUMBER 1 AND FOLIO NUMBER 3 APPEAR TO BE MISSING.

THE DOCUMENTS ATTACHED TO NOTE NUMBER 242 ARE RETURNED HEREWITH FOR SUPPLEMENTATION AND CORRECTION. END TEXT.

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01-Jan-1994 12:00:00 am  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** EXTRADITION AGREEMENTS, DIPLOMATIC NOTES  
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**Decaption Date:** 01-Jan-1960 12:00:00 am  
**Decaption Note:**  
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**Disposition Approved on Date:**  
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**Disposition Date:** 22 May 2009  
**Disposition Event:**  
**Disposition History:** n/a  
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**Document Source:** CORE  
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**Drafter:** FERONDON:JC  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
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**Original Handling Restrictions:** n/a  
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**Previous Handling Restrictions:** n/a  
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**Review Release Event:** n/a  
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**Review Withdrawn Fields:** n/a  
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**Status:** NATIVE  
**Subject:** REPLY TO GELBARD EXTRADITION REQUEST TEXT OF DEPARTMENT'S NOTE DATED APRIL 18, WHICH HAS BEEN DELIVERED TO THE ARGENTINE EMBASSY IN WASHINGTON  
**TAGS:** PFOR, AR, (GELBARD, JOSE BER)  
**To:** BUENOS AIRES  
**Type:** TE  
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**Review Markings:**  
Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
22 May 2009  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009